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Sup. Ct.

In the

Supreme Court of the United States

OCTOBER TERM, 1946

No. 880

ROBERT J. SWEM,
Petitioner,
vs.
THE PEOPLE OF THE STATE OF MICHIGAN

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN AND BRIEF IN SUPPORT THEREOF

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INDEX

	Page
Petition for Writ of Certiorari	1-6
Opinion of the Lower Court	2
Jurisdiction	2
Questions Presented	2-3
Statement	4-5
Manner in Which Federal Questions Were Raised	6
Specification of Errors to Be Urged	6
Reasons for Granting Writ of Certiorari	7-10
I. The decisions of the Michigan Supreme Court on Federal questions of substance is in conflict with decisions of this Court	7-9
II. The Federal constitutional questions presented are of vital importance	9-10
Conclusion	10
Brief in Support of Petition for Writ of Certiorari:	
Statement of Facts	11-12
Question Presented	12
Argument	13-15

INDEX TO AUTHORITIES CITED

	Page
De Meerler v. People of the State of Michigan, Case No. 140, October Term, 1946	3, 9
Hawk v. Olson, 326 U. S. 271	8
House v. Mayo, 324 U. S. 42	8
People v. Crandell, 270 Mich. 124, 258 N. W. 244	8, 15
People v. Fries, 294 Mich. 382, 293 N. W. 689	8, 15
People v. Hadded, 306 Mich. 555, 556, 11 N. W. (2d) 240	8, 15
People v. Harris, 266 Mich. 317	15
People v. Kotek, 306 Mich. 408, 11 N. W. (2d) 7, cert. denied 323 U. S. 790	8
People v. Posoni, 233 Mich. 462	15
People v. Williams, 225 Mich. 133, 195 N. W. 818	8, 15
Powell v. Alabama, 287 U. S. 45	8
Rice v. Olson, Warden, 324 U. S. 786	8, 13
Smith v. O'Grady, 312 U. S. 329	8
Tomkins v. Missouri, 323 U. S. 485	8
Williams v. Kaiser, 323 U. S. 471, 65 S. Ct. 363	8, 13

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

OPINION OF THE LOWER COURT

The opinion of the Supreme Court of the State of Michigan is not reported. The Court entered its order as follows:

> "In this matter, a petition is filed for the allowance of a Writ of Habeas Corpus, and a Brief in opposition thereto having been filed by the Attorney General, and due consideration thereof having been had by the Court,
>
> It is ordered that the petition be and the same is hereby denied, as we find there is no merit in defendant's petition, he was not deprived of securing counsel, and under our decisions he cannot complain, particularly at this late date" (R. 24).

JURISDICTION

Jurisdiction of this court is invoked under Section 237 (b) of the Judicial Code as amended, Title 28, Section 344 (b), U. S. C. The order of the Supreme Court of Michigan was entered on October 18th, 1946 (R. 24).

QUESTIONS PRESENTED

1. Whether or not due process of law, as guaranteed by the Fourteenth Amendment to the Constitution of the United States, has been denied a youth of eighteen years of age, by taking him into custody, holding him incommunicado from August 27th to September 2nd, 1931, during which time he was continuously questioned by police officers and an assistant prosecuting attorney. Charged with the crime of murder, arraigned in court, entered a plea of guilty and sentenced on the same day (September 2, 1931) to life imprisonment without benefit of counsel.

2. Whether or not due process of law, as guaranteed by the Fourteenth Amendment to the Constitution of the United States, is denied, where a youth of eighteen years of age, ignorant of his legal rights, charged with the crime of murder, is not informed by the Court, prosecuting attorney or anyone, that he is entitled to counsel, and is not informed of the difference between the degrees of murder (first and second) and manslaughter.

3. Whether or not due process of law, as guaranteed by the Fourteenth Amendment to the Constitution of the United States, is denied, where a youth of eighteen years of age, ignorant of his legal rights, charged with the crime of murder, is without counsel, the Court fails to appoint counsel for him, was not advised that he was entitled to the services of counsel, and did not understandingly or knowingly waive any of his rights to be represented by counsel.

4. Whether or not due process of law, as guaranteed by the Fourteenth Amendment to the Constitution of the United States, is denied, where a youth of eighteen years of age, ignorant of his legal rights, charged with the crime of murder is without counsel and not having waived his constitutional rights is sentenced to life imprisonment for murder in the first degree without a trial and without a full, deliberate, free and voluntary plea of guilty.[1]

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[1] The questions here presented are similar to those presented to this Court in Case No. 140, October Term, 1946, *De Meerleer v. People of the State of Michigan.*

STATEMENT

The petitioner on August 27th, 1931 was arrested by police officers of the City of Detroit,[1] held in three different police stations in the City of Detroit until September 2nd, 1931 when he was arraigned upon information, charged with the crime of murder, entered a plea of guilty and sentenced to life imprisonment (R. 23).

The petitioner at the time of the sentence and prior thereto, was not represented by counsel, had not the opportunity to consult with counsel, was not advised that he was entitled to the services of counsel, nor did he understandingly or knowingly waive any of his rights to be represented by counsel (R. 4). That he was not represented by counsel is admitted in the answer of the people,

> "Defendant was not then represented by counsel and did not request such representation. He had opportunity to consult counsel. Instead he chose voluntarily to plead guilty. In Michigan such voluntary choice is held to be a waiver by representation of counsel" (R. 16).

Further, the answer of the people states,

> "Defendant not only did not ask that counsel be appointed, but he would probably not have been entitled to have counsel assigned to him by the state, since a showing of inability to pay is a prerequisite to such assignment" (R. 16).

and again,

> "At the time of his sentence by Judge John V. Brennan, defendant was not represented by counsel" (R. 15).

---

[1] People state there is no record of petitioner's arrest on August 27th, 1931 (R. 13), contending he was arrested on August 29th, 1931 (R. 13).

In September, 1945, petitioner filed in the Recorder's Court for the City of Detroit, a motion to vacate and set aside the plea of guilty and sentence entered on September 2nd, 1931 on the ground that the plea of guilty was made in ignorance of his rights as provided by the Fourteenth Amendment to the Constitution of the United States (R. 5). That said petition was denied (R. 5), Exhibit B (R. 9).

That thereafter on the 9th day of January, 1946, the Supreme Court of the State of Michigan denied petitioner's request to appeal from the order of the Recorder's Court of the City of Detroit, denying the motion setting aside his plea of guilty and sentence (R. 6). Thereafter a petition for Writ of Habeas Corpus was filed in the Supreme Court of the State of Michigan (R. 2-7) upon the grounds, among other things, that he was deprived of his constitutional rights as provided in the Fourteenth Amendment to the Constitution of the United States (R. 5). That said petition was denied (R. 5), Exhibit B denied the allowance of the writ on the 18th day of October, 1946, stating,

> "there was no merit in defendant's petition as he was not deprived of securing counsel, and under our decisions he cannot complain, particularly at this late date" (R. 24).

Petitioner further stated in his reply to the answer of the people of the State of Michigan, that he made no signed statements pertaining to the crime and that any statements attributed to him were not free and voluntary but were a result of coercion, threat, intimidation and promises of leniency (R. 22).

MANNER IN WHICH FEDERAL QUESTIONS WERE RAISED

The question of the constitutional rights of the petitioner as provided in the Fourteenth Amendment to the Constitution of the United States was raised during all the proceedings beginning with the Petition to Vacate and Set Aside the Sentence, and in petitioner's Application for Writ of Habeas Corpus filed in the Supreme Court of the State of Mihcigan (R. 4-5).

SPECIFICATIONS OF ERRORS TO BE URGED

The Michigan Court erred:

1. In holding that petitioner was not denied any constitutional right of representation.

2. In holding that the petitioner was not denied due process of law.

3. In denying petitioner's Application for Writ of Habeas Corpus.

REASONS FOR GRANTING WRIT OF CERTIORARI

I.

THE DECISIONS OF THE MICHIGAN SUPREME COURT ON FEDERAL QUESTIONS OF SUBSTANCE IS IN CONFLICT WITH DECISIONS OF THIS COURT

The petition for Writ of Habeas Corpus filed in the Supreme Court of the State of Michigan was based primarily on the Fourteenth Amendment to the Constitution of the United States (R. 4). The people in their answer, denied that petitioner was deprived of his constitutional rights (R. 17); further,

> "He was not deprived of the right to have assistance of counsel, but voluntarily waived that right by not hiring counsel and by not asking to have counsel appointed" (R. 17-18).

The Supreme Court of the State of Michigan in its order, denying petitioner's Application for Writ of Habeas Corpus states,

> "He was not deprived of securing counsel, and under our decisions, he cannot complain, * * *" (R. 24).

The facts in this case clearly show that the petitioner has been denied due process of law under the decisions of this court.

It is undisputed that the petitioner was not represented by counsel, that the trial court did not ask him if he desired counsel, nor was he informed that he was entitled to the services of counsel. The People of the State of Michigan contend that he voluntarily waived his right to

counsel by not hiring counsel and by not asking to have counsel appointed for him (R. 17-18).

Further the people contend that in Michigan a voluntary plea is a waiver of representation by counsel (R. 16). Petitioner was denied an interview with the court prior to entering his plea (R. 22).

The Supreme Court of the State of Michigan states that the petitioner cannot complain, *particularly at this late date.* The passage of time should not be construed as a waiver of any of the petitioner's rights, inasmuch as he must spend the remainder of his life in prison and is not eligible for parole. The passage of time should not validate proceedings that were invalid at the time they were had, because they violated the petitioner's constitutional right to due process of law. In view of these facts, petitioner was denied due process of law as guaranteed to him by the Fourteenth Amendment to the Constitution of the United States. The Supreme Court of the State of Michigan relied upon its former decisions[1] denying your petitioner's Application for Writ of Habeas Corpus, which is contrary to the holdings of this Court.[2]

The importance of the questions presented is shown by the fact that the Supreme Court of the State of Michigan

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[1] *People v. Williams*, 225 Mich. 133, 195 N.W. 818; *People v. Crandell*, 270 Mich. 124, 258 N.W. 244; *People v. Fries*, 294 Mich. 382, 293 N.W. 689; *People v. Kotek*, 306 Mich. 408, 11 N.W. (2d) 7, cert. denied 323 U. S. 790; *People v. Haddad*, 306 Mich. 556, 11 N.W. (2d) 240.

[2] *Powell v. Alabama*, 287 U. S. 45; *Williams v. Kaiser*, 323 U. S. 471; *Tomkins v. Missouri*, 323 U. S. 485; *House v. Mayo*, 324 U. S. 42; *Rice v. Olson*, 324 U. S. 786; *Hawk v. Olson*, 326 U. S. 271.

Further, petitioner was denied due process in that he was sentenced to life imprisonment without his full, free, unreserved and deliberate plea of guilty. *Smith v. O'Grady*, 312 U. S. 329.

has ignored the decisions of the Supreme Court of the United States relating to the constitutional rights guaranteed by the Fourteenth Amendment to the Constitution of the United States.

In the order denying the Writ of Habeas Corpus (R. 24) the Supreme Court of the State of Michigan stated,

> "• • • under our decisions he cannot complain • • •"

inferring that under other decisions the petitioner had a just complaint and without a doubt, having in mind the decisions of the Supreme Court of the United States. Therefore, there is a serious conflict in the decisions of the Supreme Court of Michigan and of this court.

II.

THE FEDERAL CONSTITUTIONAL QUESTIONS PRESENTED ARE OF VITAL IMPORTANCE

The questions presented here are very similar to those presented to this court in *De Meerleer v. People of the State of Michigan* in which this court granted a Writ of Certiorari to the Supreme Court of the State of Michigan (Case No. 140, October Term, 1946).

The questions presented are of vital importance because they pertain to the basic rights of individuals as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Further, that in Michigan, a person sentenced to life imprisonment for first degree murder is not entitled to parole, his only recourse is to the courts, and executive clemency. Petitioner has exhausted his remedies in the courts of the state of Michigan and has been denied relief. His only remaining opportunity of being accorded

due process of law, in accordance with his constitutional rights, is in the issuance by this Honorable Court of its Writ of Certiorari to the Supreme Court of the State of Michigan.

CONCLUSION

WHEREFORE, it is respectfully prayed that this petition for a Writ of Certiorari to the Supreme Court of Michigan be granted.

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Dated:

In the

Supreme Court of the United States

OCTOBER TERM, 1946

No.....

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vs.
THE PEOPLE OF THE STATE OF MICHIGAN

PETITIONER'S BRIEF

STATEMENT OF FACTS

On the 27th day of August, 1931, the petitioner was arrested by the police officers of the City of Detroit, confined and held incommunicado at the McClellan Avenue Police Station, transferred to the Conner Avenue Police Station on the 28th day of August and held incommunicado, on the 29th day of August transferred to the Central Police Station, there held incommunicado until the 1st day of September, 1931 when he was taken to the Recorder's Court and arraigned upon a warrant charging him with

the crime of murder (R. 2-3). The People state that the records do not show the petitioner's arrest until August 29th (R. 13). During petitioner's confinement, he was continuously questioned by police officers and an assistant prosecuting attorney (R. 3). This was admitted by the People in their answer (R. 13).

On the 2nd day of September, 1931, petitioner was arraigned before a judge of the recorder's court upon information, charging him with the crime of murder (R. 3). Prior to entering a plea of guilty, petitioner requested an interview with the court but his request was denied (R. 22). That he entered a plea of guilty and was immediately sentenced to be confined in prison for the remainder of his natural life.

The petitioner was not, at any time, represented by counsel, had not the opportunity to consult with counsel, was not advised that he was entitled to the services of counsel, nor did he understandingly or knowingly waive any of his rights to be represented by counsel (R. 4). The people admit that the defendant was not represented by counsel and did not request such representation, but contend that, instead he chose voluntarily to plead guilty, and in Michigan such voluntary choice is held to be a waiver of representation by counsel (R. 16). The people further admit that the defendant not only did not ask that counsel be appointed, but he probably would not have been entitled to have counsel assigned to him by the state since a showing of inability to pay is a prerequisite to such assignment (R. 16-17).

QUESTION PRESENTED

The question here is whether or not the petitioner has been denied the constitutional rights guaranteed to him under the Fourteenth Amendment to the Constitution of the United States.

ARGUMENT

This Court has recently passed upon a similar question in *Rice v. Olson, Warden*, 324 U. S. 786, holding that,

> "a defendant who pleads guilty is entitled to the benefit of counsel, and a request for counsel is not necessary. It is enough that a defendant is charged with an offense of this character (burglary) is incapable adequately of making his defense, that he is unable to get counsel, and that he does not intelligently and understandingly waive counsel. Whether all these conditions exist is a matter which must be determined by evidence where the facts are in dispute."

It is undisputed that the petitioner was not represented by counsel, was not advised that he was entitled to counsel. However the People of the State of Michigan contend that a plea of guilty waives a right to counsel.

In *Williams v. Kaiser*, 323 U. S. 471, 65 S. Ct. 363, this Court held,

> "Like other judgments, a judgment based on a plea of guilty is not, of course, to be lightly impeached in collateral proceedings * * * But a plea of guilty to a capital offense made by one who asked for counsel but could not obtain one and who was incapable adequately of making his own defense stands on a different footing. Robbery in the first degree by means of a deadly weapon is a capital offense in Missouri; the law of Missouri has important distinctions between robbery in the first degree, robbery in the second degree, grand larceny and petit larceny. These involve technical requirements of the indictment or information, the kind of evidence required for conviction, the instructions necessary to define the several elements of the crime and the various defenses which are available. These

are a closed book to the average layman. These considerations underscore what was said in *Powell v. Alabama*, 287 U. S. at page 69. • • • The decision to plead guilty is a decision to allow a judgment of conviction to be entered without a hearing —a decision which is irrevocable and which forecloses any possibility of establishing innocence. If we assume that petitioner committed a crime, we cannot know the degree of prejudice which the denial of counsel caused. See *Glasser v. United States*, 315 U. S. 60, 75, 76. Only counsel could discern from the facts whether a plea of not guilty to the offense charged or a plea of guilty to a lesser offense would be appropriate. A layman is usually no match for the skilled prosecutor whom he confronts in the court room. He needs the aid of counsel lest he be the victim of overzealous prosecutors, of the law's complexity, or of his own ignorance or bewilderment."

"These are the reasons why the right to counsel is 'fundamental.' *Powell v. Alabama, supra*, 287 U. S. at page 70, 53 Supreme Court, at page 64, 77 L. Ed. 158, 84 A. L. R. 527; *Grosjean v. American Press Co.*, 297 U. S. 233, 243, 244, 56 Supreme Court, 444, 446, 447, 80 L. Ed. 660; *Avery v. Alamaba*, 308 U. S. 444, 447, 60 Supreme Court 321, 322, 84 L. Ed. 377. They indicate the protection which the individual needs when charged with crime. Prompt and expeditious detection and punishment of crime are necessary for the protection of society. But that may not be done at the expense of the civil rights of the citizen. Law enforcement need not be inefficient when accommodated to the constitutional guarantees of the individual."

The decisions of the Supreme Court of the State of Michigan upon the questions here presented, are contrary to the decisions of this Court.

The Michigan Supreme Court held as follows:

> That although the constitution of Michigan (art. 2, Sec. 19) secures to an accused the right to have counsel for his defense, it does not mean that he shall have it at public expense, but as a guarantee of the right to employ counsel; that an accused is not entitled as of right, to have counsel assigned by the court to advise him relative to his plea, that being a matter of judicial discretion; and that the trial judge is not bound to advise an accused of his right to counsel. That if the defendant fails to procure counsel, his neglect to request Court to assign counsel, constituted a waiver of his constitutional and statutory rights.

People v. Williams, 225 Mich. 133;
People v. Harris, 266 Mich. 317;
People v. Posoni, 233 Mich. 462;
People v. Crandell, 270 Mich. 124;
People v. Fries, 294 Mich. 382;
People v. Haddad, 306 Mich. 555.

Respectfully submitted,

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